(1)

Supreme Court, U.S.
FILED

No. 00-1483 MAR 22 2001

OFFICE OF THE CLERK

In The

Supreme Court of the United States

STEPHEN M. CRAMPTON, et al.,

Petitioners,

v.

HONORABLE TIMOTHY E. ERVIN, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

MICHAEL J. DEPRIMO*
BRIAN FAHLING
AMERICAN FAMILY ASSOCIATION
CENTER FOR LAW & POLICY
100 Parkgate Drive, Suite 2-B
P.O. Drawer 2440
Tupelo, MS 38803-2440
(662) 680-3886

**Counsel of Record*

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

65 pp

QUESTIONS PRESENTED

1. Whether Mississippi's requirement that a statutory guardian be appointed in every instance where a minor's claim is compromised in an amount in excess of $10,000 is an unconstitutional irrebuttable presumption of parental unfitness that violates the substantive and procedural protections of the Due Process Clause of the Fourteenth Amendment?

2. Whether natural parents, who objected to appointment of a statutory guardian as a condition of an otherwise agreed settlement, had standing to bring a facial and as applied challenge to the guardianship statutes where Mississippi law compelled the appointment?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

OPINIONS BELOW 1

STATEMENT OF JURISDICTION 1

STATEMENT OF NOTIFICATION 2

STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 2

BACKGROUND 6

REASONS FOR GRANTING THE WRIT 7

A. Irrebuttable Presumptions are Strongly Disfavored 8

1. The Mississippi Guardianship Statutes Irrebuttably Presume Parents are Unfit 9

2. The Statutory Presumption that Parents are Unfit is Contrary to Longstanding Supreme Court Precedent Presuming Parental Fitness, and Unduly Interferes with the Parent/Child Relationship 11

B. Subjecting Oneself to Constitutional Injury is Not Required to Confer Standing for a Facial Challenge to a State Statute 14

CONCLUSION 17

TABLE OF AUTHORITIES

Page

CASES

Adickes v. S.H. Kress & Co., 398 U.S. 144 (1970)..... 15

Aptheker v. Secretary of State, 378 U.S. 500 (1964)..... 9

Babbitt v. United Farm Workers Nat'l Union, 442 U.S. 289 (1979)..... 7, 14, 16

Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632 (1974)..... 8

Flagg Bros., Inc. v. Brooks, 436 U.S. 149 (1978)..... 15

Heiner v. Donnan, 285 U.S. 312 (1932)..... 9

Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992)..... 16

Mississippi State Bar v. Attorney Y, 585 So.2d 768 (Miss.1991)..... 2, 7, 9, 10

Parham v. J.R., 442 U.S. 584 (1979)..... 12, 13

Pennsylvania v. West Virginia, 262 U.S. 553 (1923)..... 14

Pierce v. Society of Sisters, 268 U.S. 510 (1925)..... 14

Planned Parenthood v. Casey, 505 U.S. 833 (1992)..... 13

Quilloin v. Walcott, 434 U.S. 246 (1978)..... 12

Regional Rail Reorganization Act Cases, 419 U.S. 102 (1974)..... 14

Reno v. Flores, 507 U.S. 292 (1993)..... 12, 13

Roe v. Wade, 410 U.S. 113 (1973)..... 10

Santosky v. Kramer, 455 U.S. 745 (1982)..... 12

TABLE OF AUTHORITIES – Continued

Page

Stanley v. Illinois, 405 U.S. 645 (1972) 8, 11, 12

Tot v. United States, 319 U.S. 463 (1943) 9

Troxel v. Granville, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000) 12, 13

Union Chevrolet Co. v. Arrington, 162 Miss. 816, 138 So. 593 (1932) 10

Vlandis v. Kline, 412 U.S. 441 (1973) 8

Washington v. Glucksberg, 521 U.S. 702 (1997) 13

Waters v. St. Francis Hospital, Inc., 618 F.2d 1105 (5th Cir. 1980) 15

Wisconsin v. Yoder, 406 U.S. 205 (1972) 12

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

U.S. Const. Amend. XIV 8, 13, 14

28 U.S.C. § 1254(1) 1

28 U.S.C. § 2403(a) 2

28 U.S.C. § 2403(b) 2

42 U.S.C. § 1983 ..... 5, 15

D.C. Code §§ 21-120 (2000) 7

Fla. Stat. § 744.301 (2000) 7

Ga. Code Ann. § 29-2-16 (2000) 8

Miss. Code Ann. § 91-20-1 (2000) 5

Miss. Code Ann. § 93-13-1 (2000) 3

Miss. Code Ann. § 93-13-11 (2000) 10

TABLE OF AUTHORITIES – Continued

Page

Miss. Code Ann. § 93-13-13 (2000) 2

Miss. Code Ann. § 93-13-17 (2000) 4, 10

Miss. Code Ann. § 93-13-33 (2000) 4

Miss. Code Ann. § 93-13-35 (2000) 4, 10

Miss. Code Ann. § 93-13-36 (2000) 4

Miss. Code Ann. § 93-13-37 (2000) 4

Miss. Code Ann. § 93-13-57 (2000) 4

Miss. Code Ann. § 93-13-59 (2000) 2, 7, 10

Miss. Code Ann. § 93-13-61 (2000) 4

Miss. Code Ann. § 93-13-67 (2000) 10

Miss. Code Ann. § 93-13-77 (2000) 10

Miss. Code Ann. § 93-13-211 (2000) 2, 7

Nev. Rev. Stat. Ann. § 41.200 (2000)..... 8

N.H. Rev. Stat. Ann. § 464-A:42 (2000) 8

Ohio Rev. Code Ann. § 2111.18 (Anderson 2000) 8

Miss. R. Civ. P. 11(b) 16

Supreme Court Rule 29.4 (b)..... 2

Supreme Court Rule 29.4 (c)..... 2

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The undersigned counsel of record, on behalf of Petitioners Stephen M. and Shelley P. Crampton, individually and as natural parents and next friends of Stephen Joseph Crampton, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit in the above-entitled proceeding.

OPINIONS BELOW

The Fifth Circuit, in a *per curiam* opinion, summarily affirmed the order of the district court dismissing plaintiffs' action for lack of standing. The Fifth Circuit's decision, No. 00-60281, is unpublished and reprinted in the Appendix hereto, App. 1-2. The memorandum opinion and judgment of the district court is also unreported, and is reprinted in the Appendix hereto, App. 3-13.

STATEMENT OF JURISDICTION

The judgment of the Fifth Circuit was entered December 22, 2000, only three weeks after oral argument. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF NOTIFICATION

Because the constitutionality of an act of Congress and statutes in states other than Mississippi are now drawn into question, 28 U.S.C. § 2403(a) and (b) may apply. Pursuant to Supreme Court Rule 29.4 (b) and (c), notification has been delivered to the Solicitor General of United States, and the Attorneys General of the states of Florida, Georgia, Nevada, New Hampshire, and Ohio. Notice pursuant to 28 U.S.C. § 2403(a) and (b) was not given prior hereto because neither these states nor the District of Columbia are in the Fifth Circuit.

STATUTORY PROVISIONS INVOLVED

Miss. Code Ann. §§ 93-13-13, 93-13-59, and 93-13-211. These statutes are reprinted at App. 14-17. The Mississippi Supreme Court, in *Mississippi State Bar v. Attorney Y*, 585 So.2d 768, 771 (Miss.1991), construed these statutes together to require the appointment of a legal guardian whenever a minor is awarded a monetary sum in excess of ten thousand dollars ($10,000). *Attorney Y* is reprinted at App. 31-42.

STATEMENT OF THE CASE

The essential facts of this case are not in dispute, and were adequately set forth by the district court in its memorandum opinion. *See* App. 3-6. Petitioners Stephen and Shelley Crampton are the natural parents and natural

guardians of Stephen Joseph Crampton ("Joseph"). Joseph received severe head injuries in an accident on September 19, 1997, when Matt Maynard, son of Respondent Richard Maynard, closed the trunk lid of a car on Joseph's head. The Maynards' insurance carrier, St. Paul Fire & Marine Insurance Company, agreed to pay $50,000 (the policy limit) in settlement of Joseph's personal injury claim against the Maynards. The Maynards and St. Paul conditioned the settlement on obtaining chancery court approval of the settlement amount, and the appointment of a statutory guardian to oversee the settlement funds. The Cramptons agreed to all settlement terms except appointment of a statutory guardian.

Thereafter, the Maynards' attorney scheduled a hearing for approval of the settlement terms on June 26, 1998. The hearing was to be held before Respondent Chancellor Timothy E. Ervin. In preparation for the hearing, the Maynards' attorney (who was holding the $50,000 check issued by St. Paul), prepared a petition for appointment of Shelley Crampton as Joseph's statutory guardian in accordance with the Mississippi Supreme Court's authoritative construction of Miss. Code Ann. § 93-13-1 *et seq.*[1]

Upon review of the statutes, the Cramptons learned that the Mississippi guardianship scheme requires, *inter alia*, that a statutory guardian seek prior chancery approval of any expenditures for Joseph's education. *See*

---

[1] *See Attorney Y*, App. 38.

Miss. Code Ann. §§ 93-13-35, -37. They further determined that, under this provision, not only would frequently recurring decisions, such as the purchase of pens, pencils, and paper for Joseph, who is home schooled, require prior chancery approval, but likewise major decisions, such as the selection of Joseph's college, would be subject to chancery approval.

Further review showed that the Mississippi guardianship statutes also require the posting of a bond,[2] as well as "a true and perfect inventory" of all money and property of the child filed annually. *See* Miss. Code Ann. § 93-13-33. Such a requirement would have mandated that the Cramptons list, *inter alia*, every toy, game, and T-shirt Joseph owned. Similarly, the statutes require prior chancery approval of the disposition of "any money of the ward not needed for current expenditures."[3] This requirement would have subjected to chancery court scrutiny every dollar of baby sitting money Joseph earned and spent on football trading cards or the purchase of candy at a convenience store. Even a relocation across the county line would necessitate prior court approval. *See* Miss. Code Ann. § 93-13-61.

After review of the requirements imposed upon statutory guardians, the Cramptons objected to the petition on the grounds that the mandatory statutory guardianship infringed their fundamental rights as natural parents to the care, custody, and management of their son Joseph, and their First Amendment right to religious freedom. In

---

[2] *See* Miss. Code Ann. § 93-13-17.

[3] *See* Miss. Code Ann. § 93-13-57.

response, the Maynards' attorney contacted Chancellor Ervin to inquire whether the guardianship was required over the natural parents' strenuous objections.[4] Chancellor Ervin responded to the inquiry by stating that appointment of a statutory guardian was required under Mississippi law. Because the Cramptons were not willing to agree to a statutory guardianship, the previously scheduled hearing was pointless and, consequently, canceled. The parties were at an impasse: the Maynards were statutorily compelled to condition settlement on the appointment of a statutory guardian, and the Cramptons refused to agree to such appointment. The Cramptons thereafter brought suit under 42 U.S.C. § 1983, challenging the constitutionality of the guardianship statutes on their face and as applied.

The lower court granted summary judgment for both Defendants on the basis that the Cramptons did not have standing to assert their claims, either facially or as applied, because "the hearing did not go forward," and "no chancellor ever applied the guardianship statute[s] in derogation of any of the plaintiffs' asserted rights." *See* App. 10. The Cramptons pointed out that this reasoning

---

[4] The Cramptons had suggested that settlement could be accomplished pursuant to the Uniform Transfer to Minors Act, Miss. Code Ann. § 91-20-1 *et seq*. This suggestion, which would have made the Cramptons accountable to their son Joseph for the management of the settlement funds, was rejected. The Cramptons did not object to chancellor approval of the settlement amount, but only to the appointment of a statutory guardian, which would have required continuing and intrusive chancery oversight of the settlement funds until Joseph reached the age of majority.

required parents to subject themselves to the actual loss of constitutionally protected parental rights before they had standing to make a facial challenge to the guardianship statutes. Nevertheless, the Fifth Circuit summarily affirmed the district court's decision. This petition timely followed.

BACKGROUND

The Cramptons filed a verified complaint on September 2, 1998. On December 18, 1998, the Cramptons filed their first amended verified complaint. On January 11, 1999, a case management conference was held, where it was determined that no discovery was required on the issues raised by the complaint, and that the matter could be resolved on the pleadings. The case was placed on an expedited schedule whereby dispositive motions would be filed within 90 days. On February 16, April 2, and April 5, 1999, respectively, the Cramptons, Chancellor Ervin, and the Maynards filed cross motions for summary judgment.

On March 8, 2000, the district court issued a memorandum opinion, holding that the Cramptons lacked standing to prosecute their case. That same day, judgment was entered on behalf of Defendants. On December 22, 2000, the district court's judgment was summarily affirmed by the Fifth Circuit.

REASONS FOR GRANTING THE WRIT

The lower courts ruled that the Cramptons were required to subject themselves to the actual loss of their constitutional rights before they had standing to challenge the guardianship statutes. These rulings directly conflict with this Court's well-established standing jurisprudence that a person need not await the consummation of threatened injury to obtain preventive relief where the injury threatened is imminent. *See, e.g., Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979). By requiring a statutory guardianship in every case involving a minor's claim in excess of $10,000, the Mississippi guardianship statutes create an irrebuttable presumption of parental unfitness to oversee and manage the minor's claim.[5] This irrebuttable presumption infringes fundamental parental rights in a broad range of situations in Mississippi, and in at least five other states and the District of Columbia with similar statutes.[6] *See, e.g.*, D.C. Code §§ 21-120 (2000) (requiring appointment of guardian where settlement exceeds $3,000); Fla. Stat. §§ 744.301 (2000) (granting discretion to court to appoint guardian where settlement is between $10,000 and $25,000, and requiring appointment of guardian where settlement

---

[5] The scope and reach of the guardianship statutes are not in dispute. The district court concluded that "[Miss. Code Ann. §§ 93-13-59 and 93-13-211], as interpreted by the Mississippi Supreme Court, require the appointment of a legal guardian to protect the interests of a minors estates [sic] in all instances in which the proceeds from settlement of a minor's claim exceed the sum of $10,000." App. 4. This legal conclusion was consistent with the holding of *Attorney Y*, 585 So.2d 768 at 771.

[6] These statutes are reprinted at App. 17-30.

exceeds $25,000); Ga. Code Ann. § 29-2-16 (2000) (granting discretion to court to appoint guardian where settlement between $5,000 and $10,000, and requiring appointment of guardian where settlement exceeds $10,000); Nev. Rev. Stat. Ann. § 41.200 (2000) (requiring court approval of all settlements involving claims of minor, and establishment of a blocked trust account for proceeds); N.H. Rev. Stat. Ann. § 464-A:42 (2000) (requiring appointment of guardian where settlement exceeds $10,000); Ohio Rev. Code Ann. § 2111.18 (Anderson 2000) (requiring appointment of guardian where settlement exceeds $10,000). The effect of these statutes is to inject the government into the inner sanctum of family life, and to further undermine the natural parent-child relationship.

A. Irrebuttable Presumptions are Strongly Disfavored

In a long line of cases, this Court has held that certain types of statutory irrebuttable presumptions violate the Due Process Clause of the Fourteenth Amendment. "[P]ermanent irrebuttable presumptions have long been disfavored under the Due Process [Clause] of the . . . Fourteenth [Amendment]." *Vlandis v. Kline*, 412 U.S. 441, 446 (1973) (holding unconstitutional irrebuttable presumption of nonresidency for state university students whose legal addresses were outside of the State before they applied for admission). *See also Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 644 (1974) (holding unconstitutional school maternity policy creating irrebuttable presumption of pregnant teachers' unfitness); *Stanley v. Illinois*, 405 U.S. 645, 658 (1972) (holding unconstitutional

Illinois statute containing an irrebuttable presumption that unmarried fathers are incompetent to raise their children); *Aptheker v. Secretary of State*, 378 U.S. 500, 511 (1964) (holding unconstitutional irrebuttable presumption that individuals who are members of specified organizations will, if given passports, engage in activities inimical to the security of the United States); *Tot v. United States*, 319 U.S. 463, 468-469 (1943) (holding unconstitutional irrebuttable presumption that firearm or ammunition was acquired through interstate or foreign commerce); *Heiner v. Donnan*, 285 U.S. 312, 329, 332 (1932) (holding unconstitutional conclusive presumption that gifts made within two years prior to the donor's death were made in contemplation of death).

1. The Mississippi Guardianship Statutes Irrebuttably Presume Parents are Unfit

In the instant case, the Mississippi guardianship statutes, as authoritatively construed by the Mississippi Supreme Court, require chancery court approval and the appointment of a legal guardian in *every* instance where a minor's claim is compromised or settled for an amount in excess of $10,000, even when the minor is living at home with both natural parents and there is no hint of incompetence or wrongdoing by the parents. *See Attorney Y*, 585 So.2d at 771 (holding that, in all cases involving claims due minors in an amount in excess of $10,000, "the only person authorized to receive it [i]s a legal guardian duly appointed by a chancery court which had jurisdiction of [the minor]"). This statutory requirement creates an irrebuttable presumption that parents are unfit to manage their minor child's award absent chancery approval and

oversight. As noted previously, such chancery oversight is rigorous under Mississippi law. *See also Attorney Y*, 585 So.2d at 771 (citing Miss. Code Ann. §§ 93-13-17;[7] 93-13-11;[8] 93-13-35; 93-13-59;[9] 93-13-67;[10] 93-13-77[11] (1972 & Supp. 1990) ("Legal guardians are under strict, carefully circumscribed control of the chancery court"). *See also id.* at 772 (quoting *Union Chevrolet Co. v. Arrington*, 162 Miss. 816, 826, 138 So. 593, 595 (1932) ("Chancery courts are the 'superior guardian' for minors")).

In spite of these burdensome and intrusive chancery requirements, no hearing is afforded to determine *whether* parents are fit to manage their child's settlement funds. Rather, a hearing is required only to determine *who* will be appointed statutory guardian and, as the State of Mississippi concedes, in most instances it is a natural parent.[12] Thus, Mississippi "insists on presuming rather

---

[7] Bond and oath required for statutory guardians.

[8] Sets forth rights, duties, and responsibilities of testamentary guardian.

[9] Requires chancery court approval to compromise or sell claims of minor who is under a statutory guardianship.

[10] Requires annual accounting of minor's estate by statutory guardian.

[11] Requires final accounting and presentment to chancery court.

[12] In their brief below, the State argued that the guardianship statutes were constitutional because "Chancery Court approval regarding the affairs of minors with disputed legal claims has its roots in several hundred years of legal tradition and history." (Brief at 12). The fact that an unconstitutional statutory scheme previously had not been challenged does not, of course, militate in favor of its constitutionality. *E.g., Roe v. Wade*, 410 U.S. 113 (1973)

than proving [parents'] unfitness solely because it is more convenient to presume than to prove." *Stanley*, 405 U.S. at 658. Naturally, "procedure by presumption is always cheaper and easier than individualized determination. But when, as here, the procedure forecloses the determinative issues of competence and care, when it explicitly disdains present realities in deference to past formalities, it needlessly risks running roughshod over the important interests of both parent and child." *Id.* at 656-57 (striking irrebuttable presumption that all unwed fathers were unfit parents). Like the irrebuttable presumption stricken in *Stanley*, Mississippi's statutory guardianship scheme unconstitutionally burdens parents' rights.

2. The Statutory Presumption that Parents are Unfit is Contrary to Longstanding Supreme Court Precedent Presuming Parental Fitness, and Unduly Interferes with the Parent/Child Relationship

The requirement of an appointment of a statutory guardian in every instance where a minor's claim is compromised or settled for an amount in excess of $10,000 raises serious issues of policy, as well as law. For example, as here, the requirement interferes with settlement negotiations. Also, the requirement presumes that a Mississippi chancellor, who may or may not have children of his/her own, is better suited to make judgments on

---

(invalidating abortion statutes in 31 states). Petitioners were unable to locate a single reported decision challenging the constitutionality of the guardianship statutes.

behalf of the minor child than the child's natural parents. This last presumption, of course, is in direct conflict with the long-standing principle set forth by this Court that, "so long as a parent adequately cares for his or her children (*i.e.*, is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children." *Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054, 2061, 147 L. Ed. 2d 49, 58 (2000) (citing *Reno v. Flores*, 507 U.S. 292, 304 (1993)).

It is axiomatic that parents have foremost interest in the well-being of their minor children, and that this interest has been recognized as "fundamental" to the concept of ordered liberty under our system of constitutional jurisprudence. *See, e.g., Santosky v. Kramer*, 455 U.S. 745, 753 (1982) (discussing "the fundamental liberty interest of natural parents in the care, custody, and management of their child"); *Parham v. J. R.*, 442 U.S. 584, 602 (1979) ("Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course"); *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) ("We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected"); *Stanley*, 405 at 651 ("It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children 'comes to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements' " (citation omitted)); and *Wisconsin v. Yoder*, 406 U.S. 205,

232 (1972) ("The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition").

The Due Process Clause of the Fourteenth Amendment "provides heightened protection against government interference with certain fundamental rights and liberty interests." *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (citing *Reno v. Flores*, 507 U.S. at 301-02; *Planned Parenthood v. Casey*, 505 U.S. 833, 851 (1992)). "[T]he interest of parents in the care, custody, and control of their children is perhaps the oldest of the fundamental liberty interests recognized by this Court." *Troxel*, 120 S. Ct. at 2060, 147 L. Ed. 2d at 56. "More important, historically [the law] has recognized that natural bonds of affection lead parents to act in the best interests of their children." *Id.*, 120 S. Ct. at 2061, 147 L. Ed. 2d at 58 (citing *Parham*, 442 U.S. at 602).

At bottom, *Troxel* and its antecedents stand for the proposition that a State has no business intruding upon parent/child matters absent evidence of parental unfitness. *See* 120 S. Ct. at 2060-61, 147 L. Ed. 2d at 56-57. This Court's presumption in favor of parental fitness is rendered a nullity by Mississippi's mandatory statutory guardianship requirement. Being directly opposite of this Court's well-established constitutional jurisprudence, as well as irrational, the guardianship requirement unduly interferes with the parent/child relationship. *See Troxel*, 120 S. Ct. at 2061, 147 L. Ed. 2d at 58.

B. Subjecting Oneself to Constitutional Injury is Not Required to Confer Standing for a Facial Challenge to a State Statute

With regard to standing, both the district court and the Fifth Circuit essentially held that the Cramptons had to subject themselves to actual loss of their First and Fourteenth Amendment rights before they had standing to challenge the constitutionality of the guardianship requirement:

> Because negotiations broke down and the settlement hearing did not go forward, no chancellor ever applied the guardianship statute in derogation of any of the plaintiffs' asserted rights. Chancellor Ervin's ad hoc pronouncement in response to an informal inquiry by the Maynards' counsel is simply an inadequate substitute for the actual or impending injury required by generations of jurisprudence concerning standing.

Memorandum opinion, App. 10, *summarily aff'd*, App. 1-2.

The district court's holding, however, collides headlong into this Court's pronouncement that " '[one] does not have to await the consummation of threatened injury to obtain preventive relief. If the injury is certainly impending that is enough.' " *Babbitt*, 442 U.S. at 298 (quoting *Pennsylvania v. West Virginia*, 262 U.S. 553, 593 (1923)). *See also Regional Rail Reorganization Act Cases*, 419 U.S. 102, 143 (1974); *Pierce v. Society of Sisters*, 268 U.S. 510, 526 (1925).

A question to be answered by this Court, then, is whether, in light of the irrebuttable presumption of parental unfitness, parents must actually subject themselves to an official government act (chancery appointment of a statutory guardian) that is otherwise certain and impending before they have standing to challenge a statute that *already* had been applied – as a condition to settlement – by a private party because of government compulsion, *e.g.*, statutory mandate. This application resulted in a concrete loss of $50,000 in settlement proceeds to the minor, Joseph Crampton.[13] As noted by this Court, " 'a State is responsible for the . . . act of a private party when the State, by its law, has compelled the act.' " *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 164 (1978) (quoting *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 170 (1970)). *Accord Waters v. St. Francis Hospital, Inc.*, 618 F.2d 1105, 1107 (5th Cir.1980) (a state statute that "compels a private party to act in a certain" way constitutes " 'state action' for purposes of invoking the subject matter jurisdiction of 42 U.S.C. § 1983").

Petitioners respectfully submit that the district court and Fifth Circuit were in error in holding that the Cramptons did not have standing to challenge the guardianship statutes.[14] Rather, the courts below should have

---

[13] The $50,000 check had been drafted and issued to the Maynards' attorney prior to the cancellation of the hearing to appoint Shelley Crampton as Joseph's guardian.

[14] The holding of the lower courts would have required the Cramptons to risk either the loss of their constitutional rights or court-imposed sanctions. The hearing scheduled before Chancellor Ervin was for the purpose of, *inter alia*, appointing Shelley Crampton statutory guardian of her natural son. Had

found standing because the Cramptons were at the precipice of a legal cliff, requiring either imminent surrender of their constitutional rights to the chancellor, or retreat into federal court for protection of their rights.

Under the statutory scheme, appointment of a legal guardian was a ministerial act in which the chancellor had no discretion, at least with respect to *whether* a legal guardian should be appointed. Therefore, at the time the complaint was filed, the Cramptons' interests were sufficiently "concrete and particularized" to afford Article III standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). Moreover, the complaint "demonstrate[d] a realistic danger of sustaining a direct injury as a result of the [guardianship] statute's operation or enforcement." *Babbitt*, 442 U.S. at 298. Indeed, the minor Joseph Crampton had suffered a loss of $50,000, plus interest. Under well-settled principles of standing, the complaint demonstrated the Cramptons had standing to challenge the Mississippi guardianship statutes. The lower courts erred in dismissing the complaint for lack of standing.

---

the Cramptons objected to their *own* petition on constitutional grounds, which appears to be what the lower courts required to confer standing to challenge the guardianship statutes, the Cramptons could have been sanctioned. *See* Miss. R. Civ. P. 11(b) ("If any party files a motion or pleading which, in the opinion of the court, is frivolous," the court may award sanctions).

CONCLUSION

For the foregoing reasons, this Petition for Writ of Certiorari should be granted or, alternatively, a summary order should issue reversing the lower court's judgment, and remanding for lower court review of the merits of the Mississippi guardianship scheme.

Respectfully submitted,

MICHAEL J. DEPRIMO*
BRIAN FAHLING
AMERICAN FAMILY ASSOCIATION
CENTER FOR LAW & POLICY
100 Parkgate Drive, Suite 2-B
P.O. Drawer 2440
Tupelo, MS 38803-2440
(662) 680-3886

**Counsel of Record*

APPENDIX

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 00-60281

STEPHEN M. CRAMPTON, Individually and as Natural Parent and Next Friend of Stephen Joseph Crampton, a Minor; SHELLY P. CRAMPTON, Individually and as Natural Parent and Next Friend of Stephen Joseph Crampton, a Minor,

Plaintiffs-Appellants,

VERSUS

TIMOTHY E. ERVIN, Honorable, In His Official Capacity as Chancellor for the Lee County Chancery Court; RICHARD MAYNARD, Individually and as Natural Parent and Next Friend of Matt Maynard, A Minor; CHRIS MAYNARD, Individually and as Natural Parent and Next Friend of Matt Maynard, A Minor,

Defendants-Appellees.

Appeal from the United States District Court
For the Northern District of Mississippi
1:98-CV-295-P-D

(Filed Dec. 22, 2000)

Before JOLLY and DAVIS, Circuit Judges and RESTANI,* Judge.

PER CURIAM:**

AFFIRMED. See Local Rule 47.6.

---

*Judge, U.S. Court of International Trade, sitting by designation.

**Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

STEPHEN M. CRAMPTON and SHELLY P. CRAMPTON, Individually and as natural parents and next friends of STEPHEN JOSEPH CRAMPTON, a minor

PLAINTIFFS

VERSUS

HONORABLE TIMOTHY E. ERVIN, In his official capacity as Chancellor for the Lee County Chancery Court, RICHARD MAYNARD, CHRIS MAYNARD, Individually and as natural parents and next friends of MATT MAYNARD, a minor

DEFENDANTS

CIVIL ACTION NO. 1:98cv295-P-D

MEMORANDUM OPINION

(Filed March 8, 2000)

This cause comes before the Court on cross-motions for summary judgment [15-1], [18-1] and [19-1]. The Court has duly considered the parties' memoranda and exhibits and is ready to rule.

FACTUAL BACKGROUND

This case involves a dispute over the constitutionality of Mississippi's guardianship statute, codified at Mississippi Code Annotated § 93-13-59 and § 93-13-211. These statutes, as interpreted by the Mississippi Supreme Court, require the appointment of a legal guardian to protect the assets of a minors estates [sic] in all instances in which the proceeds from settlement of a minor's claim exceed the sum of $10,000.

Plaintiffs Stephen and Shelley Crampton, a married couple, are the natural parents of Joseph Crampton, a minor. Joseph was severely injured in an incident on September 19, 1997 when Matt Maynard, also a minor, closed the trunk lid of a vehicle owned by Richard Maynard on his head while Joseph was attempting to retrieve his notebook from the trunk of the car.

The Maynard's insurance carrier, St. Paul Fire and Marine Insurance Company, negotiated a settlement in which St. Paul agreed to pay $50,000 in settlement of Joseph's personal injury claim. The Maynards and St. Paul conditioned the settlement on obtaining chancery court approval.

A hearing on the settlement was scheduled to take place on June 26, 1998 before Chancellor Ervin of the Lee County Chancery Court. In preparation for same, the Maynards' attorney M. Alison Farese prepared a petition for appointment of Shelley Crampton as Joseph's statutory guardian in accordance with the provisions of § 93-13-13.

Upon review of the guardianship petition and the statutes cited therein, Mr. and Mrs. Crampton objected to the petition. They averred that the creation of a statutory guardianship would operate as an infringement of their fundamental rights as natural parents to oversee Joseph's upbringing. The Cramptons likewise objected on the ground that the guardianship requirement violated their First Amendment right to religious freedom, inasmuch as the guardianship would allegedly necessitate the Court's intrusion into private family matters and thereby violate the Cramptons' heart-felt conviction that rearing and educating their children was a God-ordained duty. In response, Ms. Farese contacted Chancellor Ervin and voiced inquiry concerning the guardianship requirement in light of the parent's objections. Ervin affirmed Farese's understanding of the mandatory nature of the guardianship statute.

In short, the parties reached an impasse; the hearing did not go forward as scheduled. The Cramptons instead brought suit under 42 U.S.C. § 1983 against Richard and Chris Maynard and Chancellor Ervin[1] in federal court on September 2, 1998 seeking a declaratory judgment that the guardianship provisions of § 93-13-1 do not apply to the Crampton's situation and enjoining the defendants from applying said statutes against them and/or conditioning settlement upon appointment of a statutory guardian. The Complaint averred that the defendants had

---

[1] Since the filing of the Complaint, Judge Ervin retired. He has been replaced in office by Honorable Jacqueline Mask. Judge Mask is therefore substituted as a defendant pursuant to F.R.C.P. 25.

impermissibly violated the Cramptons' substantive rights under the Constitution as well as their rights to procedural due process under the Fourteenth Amendment. The Complaint also asserted a claim that the guardianship statutes are facially invalid as construed by interpretative decisions of the Mississippi Supreme Court.

The defendants filed answers denying the plaintiffs' asserted right to relief. The essential facts having been established and the parties having agreed that the matter to be determined is merely one of law, this case is now before the Court on dispositive motions filed by each of the parties. The motions have been fully briefed and the Court is ready to rule.

STANDARD OF REVIEW

The Federal Rules of Civil Procedure, Rule 56(c), authorizes summary judgment where "the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine dispute as to any material fact and that the moving party is entitled to judgment as a matter of law. *Celotex Corporation v. Catrett*, 477 U.S. 317, 322, 91 L.Ed.2d 265, 106 S. Ct. 2548 (1986). The existence of a material question of fact is itself a question of law that the district court is bound to consider before granting summary judgment. *John v. State of La. (Bd. Of T. for State C. & U.*, 757 F.2d 698, 712 (5th Cir. 1985).

A judge's function at the summary judgment stage is not himself to weigh the evidence and determine the truth of the matter, but to determine whether there is a genuine issue for trial. There is no issue for trial unless

there is sufficient evidence favoring the non-moving party for a jury to return a verdict for that party. If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 91 L.Ed.2d 202, 106 S. Ct. 2505 (1986).

Although Rule 56 is peculiarly adapted to the disposition of legal questions, it is not limited to that role. *Professional Managers, Inc. v. Fawer, Brian, Hardy & Zatzkis*, 799 F.2d 218, 222 (5th Cir. 1986). "The mere existence of a disputed factual issue, therefore, does not foreclose summary judgment. The dispute must be genuine, and the facts must be material." *Id.* "With regard to 'materiality', only those disputes over facts that might affect the outcome of the lawsuit under the governing substantive law will preclude summary judgment. *Phillips Oil Company, v. OKC Corporation*, 812 F.2d 265, 272 (5th Cir. 1987). Where "the summary judgment evidence establishes that one of the essential elements of the plaintiff's cause of action does not exist as a matter of law, . . . all other contested issues of fact are rendered immaterial. *See Celotex*, 477 U.S. at 323, 106 S. Ct. at 2552. *Topalian v. Ehrman*, 954 F.2d 1125, 1138 (5th Cir. 1992).

In making its determinations of fact on a motion for summary judgment, the Court must view the evidence submitted by the parties in a light most favorable to the non-moving party. *McPherson v. Rankin*, 736 F.2d 175, 178 (5th Cir. 1984).

The moving party has the duty to demonstrate the lack of a genuine issue of material fact and the appropriateness of judgment as a matter of law to prevail on

his motion. *Union Planters Nat. Leasing v. Woods,* 687 F.2d 117 (5th Cir. 1982). The movant accomplishes this by informing the court of the basis of its motion, and by identifying portions of the record which highlight the absence of genuine factual issues. *Topalian,* 954 F.2d at 1131.

"Rule 56 contemplates a shifting burden: the nonmovant is under no obligation to respond unless the movant discharges [its] initial burden of demonstrating [entitlement to summary judgment]." *John,* 757 F.2d at 708. "Summary judgment cannot be supported solely on the ground that [plaintiff] failed to respond to defendants' motion for summary judgment," even in light of a Local Rule of the court mandating such for failure to respond to an opposed motion. *Id.* at 709.

However, once a properly supported motion for summary judgment is presented, the nonmoving party must rebut with "significant probative" evidence. *Ferguson v. National Broadcasting Co., Inc.,* 584 F.2d 111, 114 (5th Cir. 1978). In other words, "the nonmoving litigant is required to bring forward 'significant probative evidence' demonstrating the existence of a triable issue of fact." *In Re Municipal Bond Reporting Antitrust Lit.,* 672 F.2d 436, 440 (5th Cir. 1982). To defend against a proper summary judgment motion, one may not rely on mere denial of material facts nor on unsworn allegations in the pleadings or arguments and assertions in briefs or legal memoranda. The nonmoving party's response, by affidavit or otherwise, must set forth specific facts showing that there is a genuine issue for trial. Rule 56(e), Fed.R.Civ.P. *See also Union Planters Nat. Leasing v. Woods,* 687 F.2d at 119.

While generally "[t]he burden to discover a genuine issue of fact is not on [the] court, (*Topalian*, 954 F.2d at 1137), "Rule 56 does not distinguish between documents merely filed and those singled out by counsel for special attention – the court must consider both before granting a summary judgment." *John*, 757 F.2d at 712, *quoting Keiser v. Coliseum Properties, Inc.*, 614 F.2d 406, 410 (5th Cir. 1980).

LEGAL ANALYSIS

A. Standing to Sue – Requirement of a Case or Controversy

The power of the federal judiciary extends only to actual cases or controversies. Hence, it is first necessary that the Court consider whether the plaintiffs have demonstrated the existence of a justiciable controversy prior to moving to the merits of the action. In order to bring a constitutional claim, a plaintiff must first demonstrate the essential elements of standing. Standing to sue requires the following:

(1) "injury in fact – an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical";

(2) causation, meaning that the injury is "fairly traceable to the challenged action of the defendant"; and

(3) redressability, meaning that "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision."

Valley v. Rapides Parish School Board, 145 F.3d 329 (5th Cir. 1998) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)). The plaintiffs vehemently assert that they have demonstrated the requisite elements to bring this constitutional claim. Defendants just as heatedly urge that plaintiffs lack standing.

After careful consideration, the Court concludes that the plaintiffs have not made the necessary showing of standing necessary to challenge the statute, either facially or as "applied" to them. Because negotiations broke down and the settlement hearing did not go forward, no chancellor ever applied the guardianship statute in derogation of any of the plaintiffs' asserted rights. Chancellor Ervin's ad hoc pronouncement in response to an informal inquiry by the Maynards' counsel is simply an inadequate substitute for the actual or impending injury required by generations of jurisprudence concerning standing. Nor can the Maynards' refusal to accede to a settlement under terms which might very likely place them in jeopardy of being subject to additional liability in the future be translated into an invasion of the Cramptons' "legally protected interest." Individual citizens have every right to order their lives and activities in accordance with the statutory law of the states in which they reside. Were the Court to recognize the Maynards' insistence on chancery approval as an "application" of the guardianship statute against the Cramptons, the floodgates of litigation would be opened to an endless series of litigation by parties asserting that the provisions of various statutes were wielded against them by private citizens during the course of contract negotiations and other business dealings. The Court refuses to employ

such a hollow interpretation of the standing requirements.

The defendants' motions are well-taken and should be granted. A separate judgment will be entered herein in accordance with the provisions of F.R.C.P. 58.

This, the 6th day of March, 2000.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES
DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

STEPHEN M. CRAMPTON and SHELLEY P. CRAMPTON, Individually and as natural parents and next friends of STEPHEN JOSEPH CRAMPTON, a minor

PLAINTIFFS

VERSUS

CIVIL ACTION NO. 1:98CV295-P-D

HONORABLE TIMOTHY E. ERVIN, In his official capacity as Chancellor for the Lee County Chancery Court, RICHARD MAYNARD, CHRIS MAYNARD, Individually and as natural parents and next friends of MATT MAYNARD, a minor

DEFENDANTS

JUDGMENT

This cause came on for hearing on defendants' Motion[s] for Summary Judgment [18-1] and [19-1]. The Court, having considered the motions and being otherwise fully advised in the premises, finds as follows, to-wit:

In accordance with the Memorandum Opinion entered this day, the Court finds that the defendants' motions are well-taken and should be sustained.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the defendants' Motion(s) for Summary Judgment [18-1] and [19-1] are well-taken and should be, and

hereby are, GRANTED. This cause is hereby DISMISSED WITH PREJUDICE, each party to bears [sic] its own costs.

This, the 6th day of ~~February~~ March, W.A.P. 2000.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE

Miss. Code Ann. § 93-13-13

§ 93-13-13. Appointment of guardian by court

When a testamentary guardian has not been appointed by the parent, or if appointed, has not qualified, the chancery court of the county of the residence of a ward who has an estate, real or personal, shall appoint a general guardian of his estate for him or may appoint a general guardian of his person and estate for him. If a ward have [sic] no estate the chancery court of the county of the residence of such ward may appoint a general guardian of his person only for him, giving preference in all cases to the natural guardian, or next of kin, if any apply, unless the applicant be manifestly unsuitable for the discharge of the duties. The court may allow a minor who is over the age of fourteen (14) years and under no legal disability except minority to select a general guardian, by petition to the court, signed and acknowledged before the clerk or a justice of the peace, and duly filed, but if the general guardian so selected by the minor be guardian of the person and estate of the minor or the person only of the minor then such general guardian so selected by said minor shall be a suitable and qualified person who is a resident of this state and the county in which the guardianship proceedings are pending. If the said minor desires to so select a person as general guardian of his person and estate or of his person only who is a resident of this state but who is not a resident of the county in which the guardianship proceedings are pending he may do so but thereupon such guardianship proceedings or cause shall be transferred to the county of the residence of such general guardian so selected and thereupon the minor shall be and become a legal resident of

the county of the residence of such general guardian so selected. The said minor may select in the above manner a general guardian of his estate only which may be a corporation but such corporation shall be duly qualified to do business in this state and otherwise suitable. If said minor select a person other than the natural guardian to be either the general guardian of his estate or general guardian of his person and estate or general guardian of his person only the court shall, notwithstanding, have power to appoint the natural guardian, if deemed suitable. And if any such minor over the age of fourteen (14) years fail to appear and select a general guardian of his estate only or of his estate and person or of his person only when summoned, or if the general guardian chosen fail to qualify, and no other be chosen in his stead, the court shall appoint a general guardian to the minor as if he were under fourteen (14) years. When any ward, who is not a resident of the state, owns property, real or personal, in this state, the chancery court of the county in which the property may be, may appoint a general guardian for such ward who shall be the general guardian of his estate only. If the ward be a minor over fourteen (14) years of age and under no legal disability except minority, the selection of guardian may be made before a clerk of a court of record of the state or county of his residence, and a certificate of such clerk, under his seal of office, shall be received as evidence of the selection.

Miss. Code Ann. § 93-13-59

§ 93-13-59. Sale or compromise of doubtful claims

Guardians may be empowered by the court, or chancellor in vacation, to sell or compromise claims due their wards, on the same proceedings and under the same circumstances prescribed in reference to the sale or compromise by an executor or administrator of claims belonging to the estate of a deceased person. And the guardian in such case is authorized to receive in satisfaction of claims, when to the interest of the ward, property, real or personal, the title to be taken in the name of the ward.

Miss. Code Ann. § 93-13-211

§ 93-13-211. Money or personal property not exceeding ten thousand dollars

When a ward shall be entitled under a judgment or order or decree of any court, or from any other source, to a sum of money not greater than Ten Thousand Dollars ($10,000.00), or to personal property not exceeding in value that sum, the chancery court of the county of the residence of such ward or the chancery court of the county wherein such person is entitled to such money or property, may order such money or property to be delivered to the ward or to some other person for him if he has no guardian, and compliance with such order shall acquit the person so delivering the same. Provided, however, that if said sum of money or personal property is not due

said ward, under a judgment or order or decree of a court, then in that event the chancery court before ordering said money or personal property paid over or delivered as above provided shall fully investigate said matter and shall satisfy itself by evidence, or otherwise, that the proposed sum of money to be paid, either as liquidated or unliquidated damages because of any claim of said ward whatsoever whether arising ex delicto or ex contractu, is a fair settlement of the claim of said ward, and that it is to the best interest of said ward that said settlement be made, or that said personal property be delivered to said ward. Thereupon said chancery court may authorize and decree that said sum of money or personal property be accepted by said ward and paid or delivered by the party owing or having the same as authorized by the decree of the court, and compliance with such order in the latter event shall acquit the person so paying or delivering the same. He, who under such order shall receive the money or property of a person under such disability, shall thereby become amenable to the court for the disposition of it for the use and benefit of the person under disability but shall not be required to furnish security therefor unless the chancery court shall so order.

D.C. Code § 21-120

§ 21-120. Settlement of actions involving minor children; appointment of guardian of estate

(a) A person entitled to maintain or defend an action on behalf of a minor child, including an action relating to real estate, is competent to settle an action so brought and, upon settlement thereof or upon satisfaction of a judgment obtained therein, is competent to give a full acquittance and release of all liability in connection with the action, but such a settlement is not valid unless approved by a judge of the court in which the action is pending.

(b) A person may not receive money or other property on behalf of a minor in settlement of an action brought on behalf of or against the minor or in satisfaction of a judgment in the action, where, after deduction of fees, costs and all other expenses incident to the matter, the net value of the money and property due the minor exceeds $3,000, before he is appointed by a court of competent jurisdiction as guardian of the estate of the minor to receive the money or property, and qualifies as such.

Fla. Stat. § **744.301**

§ **744.301** Natural guardians.

(1) The mother and father jointly are natural guardians of their own children and of their adopted children, during minority. If one parent dies, the natural guardianship shall pass to the surviving parent, and the right shall continue even though the surviving parent remarries. If the marriage between the parents is dissolved, the natural guardianship shall belong to the parent to whom the

custody of the child is awarded. If the parents are given joint custody, then both shall continue as natural guardians. If the marriage is dissolved and neither the father nor the mother is given custody of the child, neither shall act as natural guardian of the child. The mother of a child born out of wedlock is the natural guardian of the child and is entitled to primary residential care and custody of the child unless a court of competent jurisdiction enters an order stating otherwise.

(2) The natural guardian or guardians are authorized, on behalf of any of their minor children, to settle and consummate a settlement of any claim or cause of action accruing to any of their minor children for damages to the person or property of any of said minor children and to collect, receive, manage, and dispose of the proceeds of any such settlement and of any other real or personal property distributed from an estate or trust or proceeds from a life insurance policy to, or otherwise accruing to the benefit of, the child during minority, when the amount involved in any instance does not exceed $ 5,000, without appointment, authority, or bond.

(3) All instruments executed by a natural guardian under the powers provided for in subsection (2) shall be binding on the ward.

(4) (a) In any case where a minor has a claim for personal injury, property damage, or wrongful death in which the gross settlement for the claim of the minor equals or exceeds $ 10,000, the court may, prior to the approval of the settlement of the minor's claim, appoint a guardian ad litem to represent the minor's interests. In any case in which the gross settlement involving a minor

equals or exceeds $ 25,000, the court shall, prior to the approval of the settlement of the minor's claim, appoint a guardian ad litem to represent the minor's interests. The appointment of the guardian ad litem must be without the necessity of bond or a notice. The duty of the guardian ad litem is to protect the minor's interests. The procedure for carrying out that duty is as prescribed in the Florida Probate Rules. If a legal guardian of the minor has previously been appointed and has no potential adverse interest to the minor, the court may not appoint a guardian ad litem to represent the minor's interests, unless the court determines that the appointment is otherwise necessary.

(b) Unless waived, the court shall award reasonable fees and costs to the guardian ad litem to be paid out of the gross proceeds of the settlement.

Ga. Code Ann. § 29-2-16

§ 29-2-16. Power to compromise contested or doubtful claims; release of debtors

(a) A guardian is authorized to compromise all contested or doubtful claims for or against the ward he represents and may submit such matters to arbitration. A debtor may be released by the guardian if the release is in the interest of the ward. Furthermore, the guardian may appoint an attorney in fact in the matter, for whose acts the guardian shall be responsible.

(b) If an order of approval is obtained from the judge of the probate court based upon the best interest of the ward, the guardian is authorized to compromise any contested or doubtful claim in favor of the ward he represents without receiving the consideration for such compromise as a lump sum. Without limiting the foregoing, such compromise may be in exchange for an arrangement which defers receipt of part or all of the consideration for the compromise until after the ward reaches majority and may involve a structured settlement or creation of a trust on such terms as the court approves.

(c) In the event the gross settlement amount for a minor child's claim is $5,000.00 or less, the natural guardian of said minor child may execute and deliver to the person or entity against whom the minor has a claim a release of said claim without becoming the legally qualified guardian of the property and without such guardian's action being approved by a court of record.

(d) If legal action has not been initiated, the judge of the probate court may, in his or her discretion, authorize any natural guardian to compromise and terminate any claim where the gross settlement amount approved by the court is over $5,000.00 but the net settlement amount is less than $10,000.00 without becoming the legally qualified guardian; provided, however, the natural guardian shall hold and use such money for the benefit of the child and shall be accountable for same.

(e) If legal action has not been initiated and the net settlement is $10,000.00 or greater, the natural guardian must apply to become the legally qualified guardian and

the proposed settlement must be submitted to the probate court for approval.

(f) If legal action has been initiated through a natural guardian as next friend, a settlement is proposed, and the gross settlement amount approved by the court is over $5,000.00 but the net settlement is less than $10,000.00, the judge before whom such action is pending may, in his or her discretion, authorize such natural guardian to compromise and terminate such claim and to receive any sums paid pursuant to a compromise or judgment without becoming the legally qualified guardian by the probate court; provided, however, the natural guardian shall hold and use such money for the benefit of the child and shall be accountable for same.

(g) If legal action has been initiated through a natural guardian as next friend and a settlement has been proposed under subsection (f) of this Code section and the net settlement amount is $10,000.00 or greater, or where the trial judge otherwise requires a legally qualified guardian, the natural guardian shall apply to become the legally qualified guardian and shall file with the judge of the probate court an initial bond payable to the probate court in an amount set by the trial judge prior to compromising or terminating such claim or receiving any sums paid pursuant to a compromise or judgment.

(h) If no legal action has been instituted concerning a claim of a minor against any person or entity, a guardian who is not the natural guardian must obtain the approval of the probate court before compromising such claim. If legal action has been instituted concerning a claim of a minor against any person or entity, a guardian who is not

the natural guardian must obtain the approval of the judge before whom the action is pending before compromising such claim. Either the probate judge or the judge before whom the action is pending may appoint a guardian ad litem to look into the best interests of the minor before approving a compromise claim.

(i) If legal action has been instituted and the guardian and the defendant in such action have agreed upon a settlement, the settlement must be approved by the judge of the court before whom the action is pending. The guardian shall not be permitted to dismiss the action and present the settlement to the probate court for approval without the approval of the trial judge before whom the action is pending.

(j) Any settlement entered consistent with the provisions of this Code section shall be final and binding upon all parties, including the minor child.

(k) The term "net settlement" shall mean the gross settlement less attorneys' fees, expenses of litigation, and medical expenses for the ward which will be paid from the settlement proceeds. For purposes of determining whether a settlement must be submitted to a court for approval, the "gross settlement" shall include the present value of amounts received after majority, but for purposes of whether a guardian of the property is necessary, "gross settlement" and "net settlement" shall not include amounts to be received after majority. In determining the present value for purposes of this Code section, the present value of any payments to be received in the future by or on behalf of the minor shall be deemed to be the cost paid by or on behalf of the alleged tort-feasor to

purchase any annuity or other financial arrangement; and if the alleged tort-feasor or his or her insurer undertakes to make such future payments without purchasing an annuity or other financial arrangement, the present value shall be deemed to be the value in current dollars as calculated in good faith by the alleged tort-feasor or his or her insurer.

Nev. Rev. Stat. Ann. § 41.200

§ 41.200. Compromise by parent or guardian of claim by minor against third person; requirements of court petition; establishment of blocked trust account for proceeds of compromise; no fees to be charged in proceedings

1. If an unemancipated minor has a disputed claim for money against a third person, either parent, or if the parents of the minor are living separate and apart, then the custodial parent, or if no custody award has been made, the parent with whom the minor is living, or if a general guardian or guardian of the estate of the minor has been appointed, then that guardian, has the right to compromise the claim. Such a compromise is not effective until it is approved by the district court of the county where the minor resides, or if the minor is not a resident of the State of Nevada, then by the district court of the county where the claim was incurred, upon a verified petition in writing, regularly filed with the court.

2. The petition must set forth:

(a) The name, age and residence of the minor;

(b) The facts which bring the minor within the purview of this section, including:

(1) The circumstances which make it a disputed claim for money;

(2) The name of the third person against whom the claim is made; and

(3) If the claim is the result of an accident, the date, place and facts of the accident;

(c) The names and residence of the parents or the legal guardian of the minor;

(d) The name and residence of the person or persons having physical custody or control of the minor;

(e) The name and residence of the petitioner and the relationship of the petitioner to the minor;

(f) The total amount of the proceeds of the proposed compromise and the apportionment of those proceeds, including the amount to be used for:

(1) Attorney's fees and whether the attorney's fees are fixed or contingent fees, and if the attorney's fees are contingent fees the percentage of the proceeds to be paid as attorney's fees;

(2) Medical expenses; and

(3) Other expenses,

and whether these fees and expenses are to be deducted before or after the calculation of any contingency fee;

(g) Whether the petitioner believes the acceptance of this compromise is in the best interest of the minor; and

(h) That the petitioner has been advised and understands that acceptance of the compromise will bar the minor from seeking further relief from the third person offering the compromise.

3. If the claim involves a personal injury suffered by the minor, the petitioner must submit all relevant medical and health care records to the court at the compromise hearing. The records must include documentation of:

(a) The injury, prognosis, treatment and progress of recovery of the minor; and

(b) The amount of medical expenses incurred to date, the nature and amount of medical expenses which have been paid and by whom, any amount owing for medical expenses and an estimate of the amount of medical expenses which may be incurred in the future.

4. If the court approves the compromise of the claim of the minor, the court must direct the money to be paid to the father, mother or guardian of the minor, with or without the filing of any bond, or it must require a general guardian or guardian ad litem to be appointed and the money to be paid to the guardian or guardian ad litem, with or without a bond, the court, in its discretion, deems to be in the best interests of the minor.

5. Upon receiving the proceeds of the compromise, the parent or guardian to whom the proceeds of the compromise are ordered to be paid, shall establish a blocked trust account with the proceeds of the compromise.

Within 30 days after receiving the proceeds of the compromise, the parent or guardian shall file with the court proof that the blocked trust account has been established. If the balance in the account is more than $10,000, the parent, trustee or guardian shall annually file with the court a verified report detailing the activities of the account during the previous 12 months. If the balance in the account is $10,000 or less, the court may order the parent, trustee or guardian to file such periodic verified reports as the court deems appropriate. The court may hold a hearing on a verified report only if it deems a hearing necessary to receive an explanation of the activities of the account.

6. The clerk of the district court shall not charge any fee for filing a petition for leave to compromise or for placing the petition upon the calendar to be heard by the court.

7. As used in this section, the term "blocked trust account" means an account established in a depository institution in this state for the benefit of the minor with restrictions that the money cannot be withdrawn, except:

(a) By an order of the court which held the compromise hearing; or

(b) By certification of the court which held the compromise hearing that the beneficiary has reached the age of 18 years, at which time the account must be closed and the money distributed to the beneficiary.

N.H. Rev. Code § 464-A:42

§ 464-A:42. Settlements on Behalf of Minors

No settlement, the net amount, as defined in RSA 464-A:2, XIV-a, of which exceeds $10,000, of any suit or claim brought on behalf of a minor by a parent or next friend is valid unless approved by the appropriate superior or district court in which the action is pending or to which a writ may be made returnable. In any such settlement, if the amount to be paid to the minor before the age of majority exceeds $10,000, the superior or district court shall require proof in the form of a certified statement from the probate court that the guardian ad litem, parent, next friend, or other person who receives money on behalf of the minor whether through settlement, judgment, decree or other order, has been appointed guardian of the estate of such minor and is subject to the duties prescribed under RSA 463:19. For good cause shown, the superior or district court may approve a minor's settlement which provides for the payment of settlement proceeds after the minor attains the age of majority. Superior or district court approval is not required for any settlement, the net amount, as defined in RSA 464-A:2, XIV-a, of which is equal to or less than $10,000, of any suit or claim brought on behalf of a minor by a parent or next friend. In any such settlement, where no amount inures to the minor prior to the age of majority, no guardian of the estate of such minor is required. In the event of a structured settlement where an amount will be paid to the minor both before and after the minor reaches the age of majority, no guardian of the estate of such minor is required if the amount to be paid to the minor before the age of majority is $10,000 or less. If the amount to be paid

to the minor before the age of majority in such structured settlement exceeds $10,000, then a guardian of the estate of such minor is required.

Ohio Rev. Code Ann. § 2111.18

§ 2111.18 Claim for injury to ward or damage to property; settlement.

When personal injury, damage to tangible or intangible property, or damage or loss on account of personal injury or damage to tangible or intangible property is caused to a ward by wrongful act, neglect, or default that would entitle the ward to maintain an action and recover damages for the injury, damage, or loss, and when any ward is entitled to maintain an action for damages or any other relief based on any claim or is subject to any claim to recover damages or any other relief based on any claim, the guardian of the estate of the ward may adjust and settle the claim with the advice, approval, and consent of the probate court. In the settlement, if the ward is a minor, the parent or parents may waive all claim for damages on account of loss of service of the minor, and that claim may be included in the settlement. However, when it is proposed that the claim involved be settled for ten thousand dollars or less, the court, upon application by any person whom the court may authorize to receive and receipt for the settlement, may authorize the settlement without the appointment of a guardian and authorize the delivery of the moneys to the natural guardian of

the minor, to the person by whom the minor is maintained, or to the minor himself. The court may authorize the minor or person receiving the moneys to execute a complete release on account of the receipt. The payment shall be a complete and final discharge of any such claim.

MISSISSIPPI STATE BAR v. **ATTORNEY Y**

No. 90-BA-0255.

Supreme Court of Mississippi

585 So. 2d 768; 1991 Miss. LEXIS 598

September 4, 1991, Decided

PRIOR HISTORY:

Appeal No. 02295 from Judgment dated January 31, 1990, Ruling Judge, Complaint Tribunal.

DISPOSITION: *REVERSED FOR PRIVATE REPRIMAND.*

COUNSEL: FOR APPELLANT – Michael B. Martz, Jackson, Mississippi.

FOR APPELLEE – Cotton Ruthven, University, Mississippi.

JUDGES: En Banc. Hawkins, Presiding Justice, for the court. Roy Noble Lee, C.J., Dan Lee, P.J., Prather, Robertson, Pittman and Banks, JJ, concur. McRae, J., dissents with separate written opinion joined by Sullivan, J.

OPINION BY: HAWKINS

OPINION: The Mississippi State Bar on April 12, 1988, filed a complaint against **Attorney Y**, a practicing attorney in Port Gibson. The complaint charged Y with violating the following disciplinary rules of the Code of Professional Responsibility of our State Bar; DR1-102 (A) (5) and DR6-101 (A) (2), and also Miss. Code Ann. § 73-3-35 (1972).

The complaint factually alleged that on October 31, 1979, Y filed suit in the U.S. District Court against a

school teacher and a county school board. The district court complaint alleged that the teacher violated Y's client's civil rights while he was a student in her class. Following a three-day trial beginning October 5, 1982, there was a jury verdict for the plaintiffs in the amount of $50,000 actual and $30,000 in punitive damages.

The Bar complaint further alleged that on February 28, 1983, the county superintendent of education was served with a writ of garnishment, which was never answered. On March 22, 1983, Y moved for a default judgment against the county, which was sustained by the court on September 6, and default judgment was entered against the county school district. On December 5, 1983, the U.S. District Court magistrate entered an order directing the local bank, which held funds of the county on deposit, to disburse to "the plaintiffs" $118,128.24. Further, that the U.S. District Court then disbursed this money to Y's firm, and that Y "then disbursed the money, less previously court-approved attorney's fees, directly to his minor client's mother without seeking court approval and without taking steps to set up a guardianship to administer the funds for the minor."[1]

---

[1] While of dubious materiality to our decision, the Bar's complaint continues with an interesting saga of the county school litigation. On January 12, 1984, the district attorney filed a motion to set aside the default judgment and for an injunction, alleging that there was no lawful authority to take a default judgment against the county school board. On February 21, 1984, the U.S. District Court judge set aside the default judgment, which Y's clients unsuccessfully attempted to appeal to the U.S. Court of Appeals. Again, on December 17, 1985, the U.S. District Court set aside the default judgment, and ordered the plaintiffs to cease spending any money received by them

Y filed an answer to the bar complaint admitting its averments, and in explanation of failure to set up a guardianship for the minor, responded:

> VII. Y admits the averments of Paragraph VII except that while admitting he did not take formal steps to set up a guardianship to administer the funds for the minor [name omitted], i.e., he filed no pleadings in the Court to set up a guardianship, he did so at the request of his client and upon receiving her assurance that another attorney would be engaged to administer the money for the minor.

The Bar filed a motion for summary judgment on August 22, 1988. The motion alleged that after the $118,128.24 was disbursed to Y's firm by the U.S. District Court clerk:

> [Y] then disbursed the minor's share of the sums collected to the minor's mother, [name omitted]. At the time [Y] distributed the minor's funds to the minor's mother, a guardianship had not been established nor had approval been sought or received from the appropriate Chancery Court for disbursement of the minor's funds. (Brackets ours)

The memorandum brief in support of the motion alleges as to this disbursement:

> The money was deposited into the registry of the United States District Court on the same day and was then disbursed by the clerk of the

---

from the bank, and to account for the money within twenty days.

Y responded on January 24, 1986, that the entire funds had been spent prior to the December 17, 1985, order.

> Court to Y's firm on December 6, 1983, by check made to the order of [minor's name omitted] and [mother's name omitted] c/o [an **attorney**] **of [Y's]** firm. [Y] then disbursed the money, less previously court approved attorney's fees, directly to [minor's] mother, [mother's name omitted], without seeking court approval and without taking steps to set up a guardianship to administer the funds for the minor [name omitted]. (Brackets ours)

In his September 8, 1988, response, Y admitted the allegations of the motion, but also alleged:

> II. The allegations of Paragraph II are admitted except that as is shown by the Judgment attached hereto as Exhibit "A", the suit was filed on behalf of both [minor's name omitted] a minor by and through his next friend [name of minor's mother] and also [minor's mother] individually. The verdict returned by the jury was in favor of both, not just in favor of the minor as Paragraph II. apparently alleges. (Brackets ours)
>
> . . . .
>
> VII. The only allegation of misconduct made by the State Bar in its Motion for Summary Judgment and accompanying brief is that Respondent "failed to follow statutory requirements to have a guardianship established by the Court for proper disbursement of the funds that were the property of the minor." (Bar Brief, page 4.)
>
> VIII. Respondent admits, and has admitted from the beginning (*See* Response of Respondent to Complaint and Transcript of Hearing) that he failed to set up a guardianship.

> IX. The facts are uncontradicted (*See* Respondent's Response to Bar Complaint and Transcript of Hearing) that Respondent advised the minor and his mother that court supervision of the minor's funds was necessary, and was assured by the mother another attorney would be hired to handle the matter.
>
> X. Under such circumstances, Respondent contends that while he may have made a mistake in not forcing the mother and minor to obtain a guardianship prior to disbursing the funds under such circumstances as presented in the memorandum brief attached hereto, such mistake does not rise to the level of unethical conduct and that he should be granted Summary Judgment on such issue.

In arguing the motion, Y's counsel stated:

MR. RUTHVEN:

> Yes, sir, and we don't contest it, your Honor. But my whole point is that when you look at all the facts, that the boy was almost 18 years old, if [Y] had just sat on it for some 11 or 12 days, this wouldn't be even a technical violation. [Y] was under the impression that the mother was going to put the money in a trust account and was going to an attorney in North Mississippi. I'd like to say that it was Will Colom, but I can't. I mean [Y] assumed Will was going to do it, but she didn't tell him Will Colom was going to do it, and [Y] didn't check with Will Colom. [Y] is not trying to put the blame on Will Colom by saying what I'm saying; all I'm saying is [Y] assumed she was going to go to Will, and Will was going to do it, and it didn't happen. (Brackets ours)

On January 31, 1990, the complaint tribunal dismissed the complaint, holding that while Y had ignored the requirements of law when he failed to establish a guardianship for the minor, such failure did not rise to the "level of culpability to be considered a violation of the Code of Professional Responsibility warranting imposition of discipline."

LAW

Important information is missing from this record. We are not informed whether the $36,226.06 (according to the Bar's brief) Y paid himself as attorney was in whole or in part an attorney fee allowed him in U.S. District Court, or a sum authorized by a chancery court, or what he paid himself pursuant to some agreement he had with his clients. Of the remaining proceeds, we are not informed as to the sum due the minor's mother, if any, and the sum due the minor.

These are serious, troubling gaps, but because the Bar did not see fit to charge Y with an unauthorized payment to himself, or with paying the minor's mother individually more than was due her, we give him the benefit of the doubt, and go no further than the record before us.[2]

---

[2] Y's brief has attached a copy of his letter, dated March 12, 1987, to counsel for the Bar stating that following entry of judgment the court awarded him, Wilbur Colom and Beverly Mitchell attorney's fees and expenses.

The letter further states that the minor's mother, then divorced and remarried, had moved to a north Mississippi county, and that prior to receipt of any funds she had told him she wanted Colom, who lived in Columbus, to "handle the

Miss. Code Ann. § 1-3-21 (1972) defines "infant" as a person under 21 years of age, and Miss. Code Ann. § 1-3-27 (1972) defines "minor" as a person under 21 years. Miss. Code Ann. § 93-19-13 (1990), however, authorizes persons eighteen years of age or over to enter into contractual relations affecting personal property. We have interpreted this as authority to settle a tort claim. *Garrett v. Gay*, 394 So.2d 321 (Miss. 1981).

No complaint was ever filed with the Bar by the minor or any other person. This in and of itself is of no particular note. Even if a child thought his parent had converted his money, it would not be unusual for him nevertheless to take no step against the parent.

From the record, Y delivered at least $40,000 of the minor's money to the minor's mother. There was no legal

---

establishment of a trust fund for [minor]," and that it would "incur unnecessary expense for me to travel to north Mississippi from [name of town omitted] in the event an appearance was necessary." The letter further states he would have been delighted to have handled a non-adversarial guardianship proceeding, and was disappointed "the Plaintiffs did not choose for me to handle [minor's] affairs." The letter further states that if any prejudice had occurred it was subsequent to his representation, and not as a result of his acts. He concluded by stating it would have been unethical to have imposed himself on his clients, and that he had done nothing unethical.

Also attached to the brief is a copy of a June 10, 1985, order of the chancery court of the north Mississippi County generally removing the minor's disabilities of minority. This order names him (using his step-father's name as his last name), however, and is filed by his step-father and mother as "Next Friend." The minor, if the order is correct, was 21 on January 2, 1987.

authority for her to receive this money. Even if the sum due the minor had been less than $10,000, before the money could have been delivered to her, it would have been necessary to secure chancery court authority therefor. The court would not have authorized it, unless it found her fit and suitable to receive the funds. Also, she would have been specifically directed by the chancery court order to spend it solely for his use and benefit. Miss. Code Ann. § 93-13-211 (Supp. 1990).

Because the sum due Y's minor client exceeded $10,000, the only person authorized to receive it was a legal guardian duly appointed by a chancery court which had jurisdiction of him. Miss. Code Ann. § 93-13-1, et seq. Legal guardians are under strict, carefully circumscribed control of the chancery court. Miss. Code Ann. §§ 93-13-17; 93-13-11; 93-13-35; 93-13-59; 93-13-67; 93-13-77 (1972 & Supp. 1990). Y admits he failed to comply with the Mississippi statutes dealing with minors, and that he made a mistake. He claims he relied upon the minor's mother to contact Colom to attend to taking the necessary legal action.

The question before us is whether Y's conduct is of consequence under the rules of discipline of the Bar.

We find that it is. In *Union Chevrolet Co. v. Arrington*, 162 Miss. 816, 138 So. 593 (1932), and again in *Mississippi State Bar v. Moyo*, 525 So.2d 1289 (Miss. 1988), this Court went to unusual effort to point out the special care and solicitude the law extends to minors. Chancery courts are the "superior guardian" for minors. *Union Chevrolet*, 162 Miss. at 826, 138 So. at 595. Lawyers, of course, are all officers of the chancery court, and owe it fidelity as well

as to their client. Miss. Code Ann. § 73-3-35 (1972). The language of these decisions should not require repetition here, and we only note that it is an appalling thought that any licensed attorney in this state would dare disburse a penny of a minor's funds without complete and clear chancery court authority therefor.

In Y's defense, he said he relied on the minor's mother to contact Colom and take the necessary legal steps as to the minor's money. And, after all is said and done, she was his client, too, the minor's natural mother, and having been associated with her for over two years, he had an opportunity to observe her and appraise her character. If Y trusted her, what then was wrong in believing and accepting her promise to have a guardianship or "trust fund" set up for her minor son?

Plenty.

First, even if this minor had been an adult, Y had an absolute non-delegable duty to see that his money was paid to him personally. The minor was his client. This was a responsibility Y owed his client.[3] Instead, he delivered his minor client's money by check payable only to his mother, following which she was free to cash and spend as she chose. Y's client was a minor, and due

---

[3] Y's counsel argued that had the money been held for a few more days, the minor could have received it in his own name. If this were the case, why did he not make a separate check to the minor? He could either have held it until the minor reached his 18th birthday, or post-dated it beyond the minor's birthday and delivered it to him. There is a distressing lack of advice or counsel being given by Y to his clients as to these funds.

special solicitude and care by Y to be absolutely sure that none of his money was converted, but paid solely to a legally authorized person. Even though she was his mother, Y trivialized this solemn obligation by turning over the minor's money to someone not his legal guardian. A minor's money in *Moyo, supra*, was turned over to a natural mother, too, and little good it did him. Y reveals a shocking lack of a sense of responsibility of an attorney to a minor client in delivering this minor's money to a parent with no safeguard or restriction.

Moreover, the record is silent as to Y making the slightest effort to advise or instruct the mother as to her absolute obligation not to spend any of the minor's money, and to promptly see that a legal guardian was appointed for him by a chancery court. He left it up to her, and to Colom, if she contacted him. Then, there is nothing in the record to suggest that Y ever contacted Colom or the mother to see that she had indeed delivered the minor's money to a legal guardian. Y got his fee, gave the mother his client's money, and sent her on her way. After that, insofar as the record reveals, he forgot about the matter until called to account by the Bar.

This minor was entitled to receive a small fortune, at least $40,000. It belonged to him, and he was Y's client. Yet, Y deliberately failed to perform a professional duty he owed this boy to safeguard these funds. He simply turned over the boy's money to his mother with no caution or instructions, and made no further inquiry.

We do not have the defense from Y that he was unaware of this professional responsibility, and we would

reject it if he made such a preposterous claim. No practicing attorney can be that ignorant.

A lawyer who deals with his minor client's money as Y did with this minor client shows a shocking sense of professional responsibility. Y violated DR1-102 (A) (5 and 6) by engaging in conduct prejudicial to the administration of justice and DR6-101 (a) (2 and 3) in neglecting to perform his legal obligation to his minor client.

Y's conduct merits a public reprimand. Because of his contrition, we reduce this to a private reprimand. We hope we will not again encounter failure of an attorney to perform his professional obligation to a minor client. Such an attorney can have little hope he will escape with no more than a private reprimand.

No words should be necessary from any court to remind a lawyer of his obligation to his minor client, his duty to painstakingly fulfill it, and that there are no shortcuts. This should be ingrained in his marrow. To the extent that it is not so ingrained, then to this extent he is not fit to practice law.

REVERSED FOR PRIVATE REPRIMAND.

DISSENT BY: McRAE

DISSENT: McRAE, JUSTICE, DISSENTING:

I agree that **Attorney Y's** conduct constituted a serious lapse in professional responsibility. The majority fully analyzes the facts and, under the authority of *Union Chevrolet* and *Moyo*, correctly describes Y's conduct as, among other things, appalling. It is disappointing then that they would mete out such a lenient punishment. Worse still is the fact that a complaint tribunal, composed

of two prominent attorneys and a judge, concluded that Y's conduct warranted no sanction whatsoever.

Obviously, this simple point bears repeating: attorneys representing minors must remember that the minor is their client, not the parent. This principle has been drilled into every law student and should be followed by every practicing attorney. When attorneys are at a point of disbursing funds which they obtain for the minor, they are to seek the advice of the courts. *See* Miss. Code Ann. § 93-13-211 (Supp. 1990).

In this case **Attorney Y** utterly failed to comply with this absolute duty, and now the minor's sizable settlement has been frittered away. In my view, Y deserves more punishment than that which this Court has given him. I would send the matter back to the tribunal for further consideration.

Sullivan, J., joins.

Supreme Court, U.S.
FILED
APR 20 2001
OFFICE OF THE CLERK

No. 00-1483

In The

Supreme Court of the United States

STEPHEN M. CRAMPTON, et al.,

Petitioners,

v.

HONORABLE TIMOTHY E. ERVIN, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

S. T. RAYBURN*
Mississippi Bar No. 4663
PAIGE B. RAYBURN
Mississippi Bar No. 9696
RAYBURN LAW FIRM, PLLC
305 Heritage Drive
Post Office Box 430
Oxford, Mississippi 38655
(662) 234-1400 – Telephone
(662) 234-1999 – Facsimile
*Counsel of Record
Attorneys for Respondents Richard Maynard and Chris Maynard

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

22pp

QUESTION PRESENTED FOR REVIEW

1. Whether Petitioners have shown standing to challenge the constitutionality of Mississippi's guardianship statutes?

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. Petitioners include:

Stephen M. Crampton, Individually and as Natural Parent and Next Friend of Stephen Joseph Crampton, a Minor and

Shelly P. Crampton, Individually and as Natural Parent and Next Friend of Stephen Joseph Crampton, a Minor.

Respondents include:

Honorable Timothy E. Ervin, In his Official Capacity as Chancellor for the Lee County Chancery Court,

Richard Maynard, Individually and as Natural Parent and Next Friend of Matt Maynard, a Minor and

Chris Maynard, Individually and as Natural Parent and Next Friend of Matt Maynard, a Minor.

TABLE OF CONTENTS

Page

QUESTION PRESENTED FOR REVIEW i

LIST OF PARTIES ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES iv

STATEMENT OF THE CASE 1

ARGUMENT 1

Petitioners Lack Standing to Bring this Action ... 1

a. Injury-in-fact 2

b. Causation 5

c. Redressability 8

d. Prudential Concerns 9

CONCLUSION 10

TABLE OF AUTHORITIES

Page

CASES

Babbitt v. United Farm Workers Nat. Union, 442 U.S. 289, 99 S.Ct. 2301, 60 L.Ed.2d 895 (1979).....3, 5

Britt v. Allred, 25 So.2d 711 (Miss. 1946)..... 3

Doe v. Beaumont Independent School District, 173 F.3d 274 (5th Cir. 1999)..... 9

Flagg Bros., Inc. v. Brooks, 436 U.S. 149, 98 S.Ct. 1729, 56 L.Ed.2d 185 (1978)..... 7

Guardianship of Faust, 123 So.2d 218 (Miss. 1960) ...4, 8

Jackson v. Metropolitan Edison Co., 419 U.S. 345, 95 S.Ct. 449, 42 L.Ed.2d 477 (1974)..... 6

Lewis v. Continental Bank Corp., 494 U.S. 472, 110 S.Ct. 1249, 108 L.Ed.2d 400 (1990) 1, 5

Lugar v. Edmondson Oil Company, Inc., 457 U.S. 922, 102 S.Ct. 2744 (1982) 6

Lujan v. Defenders of Wildlife, 504 U.S. 555, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)..... 2, 5, 10

McKee v. Flynt, 630 So.2d 44 (Miss. 1993).....4, 5

Murray v. City of Austin, 947 F.2d 147 (5th Cir. 1991), *cert. denied*, 505 U.S. 1219 (1992)..... 9

Saliba v. Saliba, 753 So.2d 1095 (Miss. 2000)..... 4

Thomas v. Union Carbide Agricultural Products Co., 473 U.S. 568, 105 S.Ct. 3325, 87 L.Ed.2d 409 (1985)..... 2

TABLE OF AUTHORITIES – Continued

Page

Trinity Industries, Inc. v. Martin, 963 F.2d 795 (5th Cir. 1992) 4

Troxel v. Granville, 530 U.S. 57, 120 S.Ct. 2054 (2000) 9

Valley v. Rapides Parish School Bd., 145 F.3d 329 (5th Cir. 1998) 2, 7, 9

Whitmore v. Arkansas, 495 U.S. 149, 110 S.Ct. 1717, 109 L.Ed.2d 135 (1990) 4

STATUTES AND RULES

42 U.S.C. § 1983 5

Miss. Code Ann. § 11-7-189 (2000) 3

Miss. Code Ann. § 93-13-1 (2000) 3

Miss. Code Ann. § 93-13-5 (2000) 3

Miss. Code Ann. § 93-13-13 (2000) 3

Miss. Code Ann. § 93-13-211 (2000) 8

Miss. R. Civ. P. 67 3

OTHER AUTHORITIES

Magna Carta, 1215, King John 8

STATEMENT OF THE CASE

Petitioners' Statement of the Case is deficient in one critical respect: it does not reveal that at all relevant times in this case there was **no settlement agreement** reached between Petitioners and the Maynards. The Maynards, through their insurance carrier, did make a settlement offer to Petitioners which was conditioned upon approval of the settlement by the chancery court and the receipt of a valid and binding release. Such offer was rejected by the Petitioners and no settlement agreement was ever reached. At no time prior to, or since, the filing by Petitioners of their complaint attacking the constitutionality of Mississippi's guardianship statutes was there, or is there presently, an outstanding settlement offer to Petitioners from the Maynards, or a settlement demand outstanding from the Petitioners. At no time did either the district court or the Fifth Circuit Court of Appeals consider Petitioners' substantive claims.

ARGUMENT

Petitioners Lack Standing to Bring this Action.

The petition for writ of certiorari should be denied, quite simply, because Petitioners have no standing to bring the underlying action. There is no active case or controversy between the Petitioners and the Maynards to be decided by any court. Both the district court and Fifth Circuit Court of Appeals correctly determined that Petitioners lack standing to bring this claim. To satisfy Article III of the United States Constitution, an actual, ongoing case or controversy must exist. *Lewis v. Continental Bank*

Corp., 494 U.S. 472, 477, 110 S.Ct. 1249, 108 L.Ed.2d 400 (1990). The minimum constitutional requirements necessary to meet Article III are:

> (1) injury in fact – an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical;
>
> (2) causation, meaning that the injury is 'fairly traceable to the challenged action of the defendant'; and
>
> (3) redressability, meaning that 'it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision'.

Valley v. Rapides Parish School Bd., 145 F.3d 329, 332 (5th Cir. 1998) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 2136, 119 L.Ed.2d 351 (1992)).

a. Injury in fact.

A claim is not ripe for adjudication if it rests upon "contingent future events that may not occur as anticipated, or indeed may not occur at all." *Valley*, 145 F.3d at 333 (quoting *Thomas v. Union Carbide Agricultural Products Co.*, 473 U.S. 568, 581, 105 S.Ct. 3325, 333, 87 L.Ed.2d 409 (1985)). There is no outstanding settlement agreement between the Petitioners and the Maynards. There is nothing to take before a Mississippi Chancellor.[1] Petitioners,

---

[1] Since it is not likely that a settlement offer will be forthcoming from the Maynards it is possible that Petitioners will sue the Maynards to recover damages for Joseph's injury.

therefore, rely on this Court's decisions holding that one is not required to suffer injury to obtain preventive relief in order to establish injury-in-fact. *Petitioners' Petition* pp. 14-16. However, in the primary case relied on by Petitioners, this Court held "[A] plaintiff who challenges a statute must demonstrate a *realistic*, i.e., imminent, danger of sustaining a direct injury as a result of the statute's operation or enforcement." *Babbitt v. United Farm Workers Nat. Union*, 442 U.S. 289, 298, 99 S.Ct. 2301, 60 L.Ed.2d 895 (1979) (emphasis added). Petitioners claim that in light of an alleged irrebuttable presumption of parental unfitness in Mississippi's guardianship statutes, a realistic threat of injury exists. *Petitioners' Petition* p. 15. Petitioners' assertion that such presumption exists is defeated by the language of the statutes themselves and Mississippi case law.[2] The overwhelming majority of Petitioners'

The success of such a suit certainly can not be assumed; however, if Joseph was awarded a judgment, the Maynards would pay such judgment amount into the circuit court which tried the case and such court would issue a Satisfaction of Judgment to them. Such Satisfaction releases the Maynards from the case fully and forever, including relieving them of participation in how the judgment is to be paid to the minor, Joseph. The payment of the judgment proceeds to the minor is a determination to be made by the Circuit Court. Therefore, the situation could in no way give rise to any controversy between Petitioners and the Maynards regarding the applicability of Mississippi's guardianship statutes. See, Miss. Code Ann. § 11-7-189 (2000) (App. 2) and Rule 67 of the Miss. R. Civ. P. (App. 2).

[2] See, Miss. Code Ann. §§ 93-13-1, -5 set forth on App. 1 and §§ 93-13-13 and -211, which are set forth in the Appendix to *Petitioners' Petition*, pp. App. 14-17. See also, *Britt v. Allred*, 25 So.2d 711 (Miss. 1946) (holding that a child's parents cannot,

arguments are based upon custodial issues. However, the custody of wards is not relevant to the issues in this case.[3]

A federal court is powerless to create its own jurisdiction by embellishing otherwise deficient allegations of standing. *Trinity Industries, Inc. v. Martin*, 963 F.2d 795, 798 (5th Cir. 1992) (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 15-56, 110 S.Ct 1717, 1723, 109 L.Ed.2d 135 (1990)). This Court cannot assume or presume that a particular outcome might occur, when no facts can be found in the record to support such contention, in order to reach the conclusion Petitioners may suffer injury.[4] Such action

---

under the due process of law provisions of the state and federal constitutions, be deprived by a judicial proceeding of their parental rights without notice thereof, and an opportunity to be heard in opposition thereto) and *McKee v. Flynt*, 630 So. 2d 44, 47 (Miss. 1993) (Chancellor could not award custody to third party without finding that parents were unfit).

[3] In addition to custodial issues, Petitioners complain of the necessity to get court approval to purchase school supplies, to determine where to school Joseph and in order to move Joseph from the county. *Petitioners' Petition* p. 4. Petitioners misconstrue the statutes: the approval necessary would be the decision to use the minor's funds to pay such expenses, i.e., secondary school expenses, an expense which is the responsibility of the parents. See, *Saliba v. Saliba*, 753 So.2d 1095, 1099 (Miss. 2000) A minor having his/her own estate does not relieve the parents of their duties to support and care for their minor children. *Id.*

[4] Petitioners have not shown that they have been denied any right; or that there is some kind of precedent for alleging the chancery court would act in the manner alleged in the Petition (including that such statutes include an irrebuttable presumption of parental unfitness). In fact, Mississippi law shows just the opposite. See, *Guardianship of Faust*, 123 So.2d 218, 220 (Miss. 1960) ("The mere fact that appellant was appointed

would in effect be a ruling upon a hypothetical situation which the courts continually refuse to do. See, e.g., *Lewis v. Continental Bank Corp.*, *Babbitt v. United Farm Workers Nat'l Union*, *Valley v. Rapides Parish School Board*, and *Lujan v. Defenders of Wildlife*. There are no facts in this case which would tend to show that the Maynards' requirement of approval of the settlement by the appropriate chancery court would result in *any* injury, concrete, particular, actual, imminent or otherwise to Petitioners.

b. Causation

Petitioners argue that the Maynards have somehow violated their constitutional rights, causing injury to them, by conditioning the settlement offer upon chancery court approval of the minor's settlement. *Petitioners' Petition* pp. 5 & 15. To prove causation, Petitioners must show that the alleged injury is fairly traceable to the Maynards' requirement for chancery court approval. To trace the alleged injury to the Maynards, the Petitioners must establish that the Maynards were "state actors" for purposes of 42 U.S.C. § 1983. This they have failed to do. In order for the Maynards, as private persons, to be held liable under Section 1983, the Petitioners must establish that the Maynards may fairly be said to be "state actors."

---

guardian of the persons, as well as estates, of his children did not vest the chancery court with the right to invade parental prerogatives."); *McKee v. Flynt*, 630 So. 2d 44, 47 (Miss. 1993) (Chancellor could not award custody to third party without finding that parents were unfit).

This Court has established a two-prong test in determining state action:

> As the Court said in *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 349, 95 S.Ct. 449, 453, 42 L.Ed.2d 477 (1974):
>
> > . . . First, the deprivation must be caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the state or by a person for whom the State is responsible. In *Sniadach, Fuentes, W. T. Grant,* and *North Georgia,* for example, a state statute provided the right to garnish or to obtain prejudgment attachment, as well as the procedure by which the rights could be exercised. Second, the party charged with the deprivation must be a person who may fairly be said to be a state actor. This may be because he is a state official, because he has acted together with or has obtained significant aid from state officials, or because his conduct is otherwise chargeable to the State. **Without a limit such as this, private parties could face constitutional litigation whenever they seek to rely on some state rule governing their interactions with the community surrounding them.** [emphasis added]

Lugar v. Edmondson Oil Company, Inc., 457 U.S. 922, 936-37, 102 S.Ct. 2744, 2753-54 (1982).

In this analysis, **action by a private party pursuant to a statute, without something more, is not sufficient to justify a characterization of that party as a "state actor".** *Lugar*, 457 U.S. at 939, 102 S.Ct. at 2754. The District Court correctly determined that the floodgates of litigation would be opened to parties asserting that provisions of

various statutes were wielded against them by private citizens during the course of contract negotiations and other business dealings if the Maynards were found to be state actors. *Petitioners' Petition* p. App. 10 (*Memorandum Opinion).*

The Maynards simply made a settlement offer, requiring chancery court approval since the payee was a minor and could not otherwise bind himself to the settlement. That offer was rejected by Petitioners. Petitioners' argument that the Maynards are state actors because they were "compelled" to require appointment of a guardian as a condition of the settlement fails. *Petitioners' Petition* p. 15. The statutes in question do not compel a certain act by the Maynards, it simply recognizes a minor's inability to contract for him/herself and protects such minor's rights by not recognizing settlements as valid without chancery court approval. The Maynards could have simply paid the money and taken their chances. Therefore, the action required by *Flagg Bros., Inc. v. Brooks,* 436 U.S. 149, 98 S.Ct. 1729, 56 L.Ed.2d 185 (1978) and the other cases set forth in Petitioners' Petition is not present here. *Petitioners' Petition* p. 15.

The Maynards did not act together with any state official nor obtain any aid from state officials; they simply protected their own interests in attempting to obtain a final and binding settlement with a minor. It is spurious for Petitioners to argue that the Maynards caused the application of the statutes which they claim are unconstitutional on their face. Petitioners have not shown that the alleged injury suffered is fairly traceable to the challenged action of the Maynards and have failed to meet the causation requirement of *Valley.* The Maynards have

"no dog in this fight" and should not be parties to this lawsuit.

c. Redressability.

Petitioners have asked this Court to declare as unconstitutional statutes codifying and expanding ancient common law designed for the sole purpose of preserving the estates of minors. See, *Magna Carta*, 1215, King John.[5] Petitioners' arguments are centered around the statutes governing custodial issues of wards by guardians, which are not at issue here. Potential settlement proceeds, less funds to pay medical expenses (not Joseph, the person) were the only thing potentially subject to the guardianship laws in this instance.

Petitioners' facial challenge and challenge as applied fail for obvious reasons. The natural parents are considered fit for purposes of this statute, unless otherwise determined by the court. Miss. Code Ann. § 93-13-211 (2000). See also, Miss. Code Ann. § 93-13-1 (2000). While the statute was never applied to Petitioners, there is no expectation that such application would infringe upon a parent's rights to act in the best interest of a minor. See, *Guardianship of Faust*, 123 So.2d at 220. Therefore, it is not likely that Petitioners' claims will be redressed with a favorable decision.

---

[5] As confirmed by Henry II in 1225 and Edward I in 1297 and as followed in every common law jurisdiction since that time.

d. Prudential Concerns.

Once the constitutional requirements have been met, a court must satisfy prudential concerns balancing the need to expend its resources on a case it may never need to decide against the expense and hardship to the parties of having a delayed adjudication. *Valley*, 745 F.3d at 332. The prudential concerns include:

1. whether the plaintiff's complaint falls within the zone of interests protected by the statute or constitutional provision at issue;
2. whether the complaint raises abstract questions amounting to generalized grievances which are more appropriately resolved by legislative branches; and
3. whether the plaintiff is asserting his or her legal rights and interests rather than the legal rights and interests of third parties.

Doe ex rel. Doe v. Beaumont Independent School Dist., 173 F.3d 274, 281 (5th Cir. 1999) (quoting *Murray v. City of Austin*, 947 F.2d 147, 151 (5th Cir. 1991, *cert. denied*, 505 U.S. 1219, 112 S.Ct. 3028, 120 L.Ed.2d 899 (1992))). Prudential concerns dictate a ruling that Petitioners lacked standing to bring suit. In order to support their claim, Petitioners rely on this Court's recent decision in *Troxel v. Granville*, 530 U.S. 57, 120 S.Ct. 2054 (2000), holding that parents have certain rights in the raising of their children and further holds there is a presumption that fit parents act in the best interests of their children. Mississippi law is not contrary to *Troxel*. Furthermore, parental rights are not at issue here, as the parent of a minor has no fundamental right in the estate of a minor, even for use to discharge obligations of the parents, which benefit the

minor. Petitioners espouse no right of their own which is protected by the guardianship statutes. Petitioners' complaints are nothing more than a "generalized grievance" regarding the guardianship statutes.

CONCLUSION

It is undisputed that there was and is no settlement agreement between Petitioners and the Maynards. Petitioners have failed to show any facts which meet the requirements in *Lujan v. Defenders of Wildlife* necessary to establish Article III standing. The applicable statutes here, Miss. Code Ann. § 93-13-1, et al., do not purport to create the situations described by Petitioners in their Petition for Writ of Certiorari. There are simply no facts in the record from which this Court can determine standing on Petitioners' behalf without embellishing the allegations to support standing offered by Petitioners. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

RICHARD MAYNARD and
CHRIS MAYNARD

S. T. RAYBURN* – MS Bar No. 4663
PAIGE B. RAYBURN – MS Bar No. 9696
RAYBURN LAW FIRM, PLLC
305 Heritage Drive
Post Office Box 430
Oxford, Mississippi 38655
(662) 234-1400
(662) 234-1999 (facsimile)
**Counsel of Record*

Miss. Code Ann. § 93-13-1 (2000)

§ 93-13-1. Parental guardianship of minor children.

The father and mother are the joint natural guardians of their minor children and are equally charged with their care, nurture, welfare and education, and the care and management of their estates. The father and mother shall have equal powers and rights, and neither parent has any right paramount to the right of the other concerning the custody of the minor or the control of the services or the earnings of such minor, or any other matter affecting the minor. If either father or mother die or be incapable of acting, the guardianship devolves upon the surviving parent. Neither parent shall forcibly take a child from the guardianship of the parent legally entitled to its custody. But if any father or mother be unsuitable to discharge the duties of guardianship, then the court, or chancellor in vacation, may appoint some suitable person, or having appointed the father or mother, may remove him or her if it appear that such person is unsuitable, and appoint a suitable person.

Miss. Code Ann. § 93-13-5 (2000)

§ 93-13-5. When guardian not entitled to custody of ward.

The guardian of a ward whose father or mother is living, and a suitable person to have the custody of the ward, shall not be entitled, as against the parent, to the custody of the ward, but the guardian of a ward who has no parent shall be entitled to the custody of the ward as

well as the estate, or the court or chancellor may appoint one (1) person to be guardian of the person, and another to be guardian of the estate of the ward.

Miss. Code Ann. § 11-7-189 (2000)

§ 11-7-189. Enrollment of judgments; judgment roll; satisfaction.

(1) The clerk of the circuit court shall procure and keep in his office one or more books to be styled "The Judgment Roll," which book or books shall be appropriately divided under the several letters of the alphabet, and on each page shall be placed the following captions:

Defendant's Name and Name of Defendant's Attorney and Post Office Address of Each	Amount of Judgment or Decree	Date of Rendition	County and Court in Which Rendered	Social Security or Tax Identification Number
Date, Hour and Minute of Enrollment	Plaintiff's Name, Plaintiff's Attorney, and Post Office Address of Each		When and How Satisfied	Remarks

The clerk shall, within twenty (20) days after the adjournment of each term or court, enroll all final judgments rendered at that term in the order in which they were entered on the minutes by entering on The Judgment Roll under the proper letter or letters of the alphabet, the name of each and every defendant to such judgment, the post office address of each defendant, and the social security or tax identification number of each defendant if such information is known or readily ascertainable, and if such defendant or defendants have an attorney at law in such case the name and post office address of such attorney or firm of attorneys if such post office address is known or readily ascertainable; the amount of such judgment; date of rendition; county and court in which rendered; the date, hour and minute of enrollment; and the name of the plaintiff or plaintiffs and the post office address of each plaintiff if readily ascertainable, and if represented by an attorney at law or a firm of attorneys then the name and post office address of such attorney or firm of attorneys if the post office address is known or readily ascertainable. The name of the attorney or firm of attorneys and post office addresses of the parties may be subsequently inserted by the clerk at any time.

Notwithstanding the foregoing, the failure to list a social security number on a judgment roll shall not invalidate said judgment nor shall it make the party failing to list said judgment liable for such failure to list or the recording official liable for such failure.

(2) Any attorney of record representing a plaintiff or plaintiffs in the case may, for and on behalf of his client or clients, satisfy in whole or in part a judgment on

such Judgment Roll by endorsing thereon the extent of such satisfaction and signing an entry so showing, and when so satsified the clerk shall attest and subscribe such endorsement under the proper heading therein. When any judgment shall otherwise be satisfied, the clerk shall so enter under proper heading and subscribe the entry.

(3) The Judgment Roll may be kept on computer as provided in Section 9-7-171. In such case the plaintiff or attorney representing such plaintiff shall present to the clerk a sworn affidavit directing the clerk to cancel or otherwise show as satisfied the judgment recorded under this section.

Miss. Rules of Civil Procedure – Rule 67

Rule 67. Deposit in Court

In any action in which any part of the relief sought is judgment for a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing.

Where money is paid into court to abide the result of any legal proceeding, the judge may order it deposited at interest in a federally insured bank or savings and loan association authorized to receive public funds, to the credit of the court in the action or proceeding in which the money was paid. The money so deposited plus any interest shall be paid only upon the check of the clerk of

the court, annexed with its certified order for the payment, and in favor of the person to whom the order directs the payment to be made.